

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1842
SPONSOR: Commerce, Economic Opportunities, and Consumer Services Committee and Senator Miller
SUBJECT: Sales Representative Contracts Involving Commissions
DATE: March 24, 2004 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kruse	Maclure	CM	Favorable/CS
2.			JU	
3.				
4.				
5.				
6.				

I. Summary:

Committee Substitute for Senate Bill 1842 corrects a constitutionality problem in the statute governing sales representative contracts involving commissions by removing language that applied the provisions of the statute only to out-of-state companies. The committee substitute also provides that it applies to the solicitation of wholesale and retail orders by a sales representative by revising the definitions of “principal” and “sales representative” to remove the word “wholesale” from those definitions and by removing the word “wholesale” from the written contract requirement section.

The committee substitute revises the definition of “principal” to mean a person or business which: manufactures, produces, imports, or distributes a product or service; contracts with a sales representative to solicit orders for the product or service; and compensates the sales representative, in whole or in part, by commission. The committee substitute revises the definition of “sales representative” to mean a person or business which contracts with a principal to solicit orders and who is compensated, in whole or in part, by commission, but does not include a person or business which places orders for his or her own account for resale or a seller who complies with certain state laws or federal regulations governing a buyer’s right to cancel a home solicitation sale. When no written contract exists between a principal and a sales representative, the committee substitute provides a cause of action for triple the amount of the commission found to be owed if the principal fails to pay the sales representative within 30 days after the termination of the sales representative’s services.

This committee substitute substantially amends section 686.201, Florida Statutes.

II. Present Situation:

Sales Representative Contracts Involving Commissions

Section 686.201, F.S., governing sales representative contracts involving commissions, was passed by the Legislature in 1984 to provide some regulation over the contractual relationship between an out-of-state business (principal) and a sales representative hired to solicit wholesale orders for that principal within this state. The statute does not apply to an in-state principal who contracts with a sales representative to solicit wholesale orders within this state or to a contract between a wholesale business and an independent agent hired as a sales representative to sell the business's products for a commission on the retail level.

The statute applies only to an out-of-state principal because "principal" is defined as a person who does not have a permanent or fixed place of business in this state and who:

- Manufactures, produces, imports, or distributes a product for wholesale, except for fresh commodities;
- Contracts with a sales representative to solicit orders for the product; and
- Compensates the sales representative, in whole or in part, by commission.¹

A sales representative is defined as a person who contracts with a principal to solicit wholesale orders and who is compensated, in whole or in part, by commission, but does not include a person who places orders for his or her own account for resale.²

The statute provides that if a principal contracts with a sales representative to solicit wholesale orders within this state, the contract must be in writing and must set forth the method by which the commission is to be computed and paid. If a contract between a principal and a sales representative is terminated and the contract was not in writing, the statute provides that the principal must pay all commissions due within 30 days of the termination. If the principal fails to pay commissions due within 30 days of termination, the sales representative has a cause of action for double the amount of the commission found to be due.³

Constitutional Issues

In 1992, the state's Third District Court of Appeal heard a case filed by a sales representative to recover commissions the sales representative claimed he was owed by an out-of-state principal.⁴ The court upheld the trial court's decision to award the sales representative the sales commission that the sales representative had earned under an oral agreement with the principal.⁵ However, the court disagreed with the trial court that the sales representative was owed double the damages because the court found that s. 686.201, F.S., was unconstitutional under the Commerce Clause of the U.S. Constitution. The court found that the statute violated the Commerce Clause because it imposed requirements on an out-of-state principal or business that did not apply to an in-state

¹ Section 686.201(1)(b), F.S.

² *Id.* at (1)(c).

³ *Id.* at (2) and (3).

⁴ *D.G.D., Inc. v Berkowitz*, 605 So. 2d 496 (3rd DCA 1992).

⁵ *Id.* at 497.

principal or business.⁶ This decision has not been overturned by any subsequent court decision, and s. 686.201, F.S., has been amended only once since the decision was rendered to add in the personal pronoun “her” to the definition of sales representative.

Other States’ Sales Representative Contract Laws

Alabama and Georgia both have statutes governing sales representative contracts involving commissions that are similar to Florida’s current law but contain some key differences.

Alabama

In 1994, the Alabama Legislature removed the provision in the definition of principal that applied the statute only to out-of-state principals. However, unlike Florida’s law, which relies on the contract between the parties to determine when a commission is due, Alabama’s statute provides for two methods for determining the time when a commission is due if not specified in a contract. One method is to review the past practices between the parties. However, if there are no past practices between the parties, then the custom and usage in the state controls the time when a commission is due.⁷ Alabama’s statute also provides that a sales representative may recover triple the amount of the commission found to be owed if a principal fails to pay a sales representative within 30 days after terminating the sales representative’s contract.⁸ Alabama’s statute applies only to a sales representative’s contract with a principal to solicit *wholesale* orders for the principal and does not cover contracts for the solicitation of services for the principal.

Georgia

Georgia’s statute applies to anyone doing business in that state.⁹ The statute provides that a sales representative may recover in a civil action double the amount of the commission found to be owed if the principal does not pay the sales representative within 30 days after terminating a contract with the sales representative.¹⁰ Georgia’s statute applies also only to a sales representative’s contract with a principal to solicit *wholesale* orders for the principal and does not cover contracts for the solicitation of services for the principal.

III. Effect of Proposed Changes:

Sales Representative Contracts Involving Commissions

The committee substitute corrects a constitutionality problem in the law governing sales representative contracts involving commissions by deleting language that applied the provisions of the law only to out-of-state companies. The committee substitute also provides that it applies to the solicitation of wholesale and retail orders by a sales representative by revising the definitions of “principal” and “sales representative” to remove the word “wholesale” from those definitions and by removing the word “wholesale” from the written contract requirement section.

⁶ *Id.* at 498.

⁷ Ala. Code § 8-24-2(b) (2003).

⁸ *Id.* at § 8-24-3.

⁹ Ga. Code Ann. § 10-1-700(2) (2003).

¹⁰ *Id.* at § 10-1-702(b)(2).

The new definition of “principal” means a person or business which:

1. Manufactures, produces, imports, or distributes a product or service.
2. Contracts with a sales representative to solicit orders for the product or service.
3. Compensates the sales representative, in whole or in part, by commission.

The new definition of “sales representative” is a person or business which contracts with a principal to solicit orders and who is compensated, in whole or in part, by commission, but does not include a person or business which places orders for his or her own account for resale or a seller who complies with s. 501.025, F.S., which is the state law governing a buyer’s right to cancel a home solicitation sale, or 16 C.F.R. part 429, which is the federal regulation governing a buyer’s right to cancel a home solicitation sale.

The committee substitute removes the word “wholesale” from the types of orders solicited by the sales representative from the section that requires a written contract between a principal and a sales representative. The committee substitute does not revise the requirement that the written contract set forth the method by which the commission is to be computed and paid when a principal contracts with a sales representative to solicit orders in this state.

The committee substitute provides that when the contract between a sales representative and a principal is terminated and the contract was not reduced to writing, and the principal fails to pay any commissions owed within 30 days after termination, the sales representative may recover triple the amount of commission found to be due by a court, rather than double the amount under current law.

This committee substitute takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

An independent agent who is hired as a sales representative without a contract by a business and who solicits wholesale or retail orders for that business may be able to bring a cause of action for triple the commission found to be owed by a court if the business fails to pay the sales representative within 30 days after terminating the services of the independent agent. Additionally, the committee substitute's provisions will apply to sales representative contracts involving commissions in the case of out-of-state and in-state principals.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
